

YUNKER & ASSOCIATES

Katherine K. Yunker
P.O. Box 21784
Lexington, KY 40522-1784

859-255-0629
FAX: 859-255-0716
yunker@psa.com
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JUL 23 2004

PUBLIC SERVICE
COMMISSION

July 23, 2004
VIA HAND DELIVERY

Elizabeth O'Donnell, Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602-0615

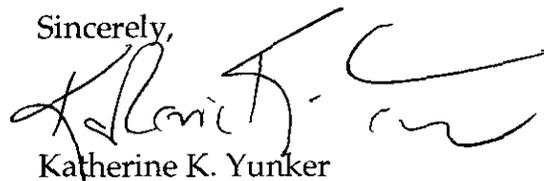
Re: Case No. 2003-00266, Investigation into the Membership of
Louisville Gas and Electric Company and Kentucky Utilities
Company in the Midwest Independent Transmission System
Operator, Inc.

Dear Ms. O'Donnell:

Please find enclosed a Revised Procedural Schedule to be filed on behalf of the Midwest ISO in the above-referenced proceeding. Although we are placing this filing in the after-hours box, because it is not voluminous, we have included ten (10) copies along with the original. An additional copy to be file-stamped and returned to our office (and a self-addressed stamped envelope) have also been enclosed.

Thank you for your attention to this matter.

Sincerely,



Katherine K. Yunker

Enclosures

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Investigation into the Membership of
Louisville Gas and Electric Company
and Kentucky Utilities Company in the
Midwest Independent Transmission
System Operator, Inc.

Case No. 2003-00266

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JUL 23 2004

**PUBLIC SERVICE
COMMISSION**

**Revised Procedural Schedule
proposed by the Midwest ISO**

The Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") hereby responds to the Commission's 7/10/04 Order, and individually proposes revised procedural dates as shown on the schedule attached hereto as Exhibit A. In an effort to present a consensus filing of revised procedural dates, Kentucky Utilities Company and Louisville Gas and Electric Company (collectively referred to as "LG&E/KU") and the Midwest ISO circulated suggested procedural schedules to all parties, and discussed their respective proposals in a conference call hosted by LG&E/KU to which all parties were invited. No consensus was reached on that call.

The timetable contained in the Midwest ISO's proposed schedule mirrors the general contours of the deadlines suggested by LG&E/KU in its previously distributed proposal. However, if LG&E/KU proposes a revised procedural schedule similar to the one it circulated, there will be significant differences in the proposals before the Commission. In brief, where the proposals differ, the Midwest ISO submits that the procedural schedule attached hereto as Exhibit A establishes a more efficient process for providing accurate and useful information for this investigation, while also ensuring due process:

1. Optional Informal Conference. The revised schedule circulated by LG&E/KU proposes that an informal conference be held "on Day-Two issues" in the second week of August. This suggestion mirrors the request in its 6/22/04 motion for an informal conference "on

issues concerning the markets [Midwest ISO's tariffs filed with FERC] would create, commonly known as MISO's 'Day 2 markets.'" The Commission apparently obviated the need for such a conference with its 6/22/04 Order directing that LG&E/KU file testimony about "the energy market tariffs that have been filed recently by MISO" Thus, when LG&E/KU moved on June 29 to modify the procedural schedule established by the Commission in its 6/22/04 Order, it "remanded" its request for an informal conference. Furthermore, it did not join in the Midwest ISO's suggestion, filed July 1, 2004, that an informal conference be held to discuss the scope of the supplemental proceedings and facilitate setting a procedural schedule.

The Commission has reopened the evidentiary record for additional information about, *inter alia*, the Day 2 markets, any such information should be supplied on the record for examination and review. As such, the focus of an informal conference should be on matters related to scope and schedule, rather than substantive discussion of issues being investigated. The parties and Commission Staff could discuss the scope of the supplemental proceedings in this matter, possible parameters for information and projections to allow meaningful comparison with information already in the record, and a reasonable, mutually convenient procedural schedule.

2. No Pre-Testimony Discovery Requests. LG&E/KU's 6/29/04 motion to modify the procedural schedule and the proposed schedule it circulated feature pre-testimony discovery requests. The 6/29/04 motion asked for data requests to be submitted by LG&E/KU to intervenors and intervenor responses thereto and then data requests to and response from LG&E/KU, all before LG&E/KU filed testimony, and the circulated proposal still asks for pre-testimony discovery on the Midwest ISO. The 6/29/04 motion and discussions with LG&E/KU counsel indicate that this discovery would be about the "Day 2 market issues"; although LG&E/KU may claim that it cannot prepare testimony without first obtaining compelled discovery, extensive

participation in the Midwest ISO stakeholder process and in docketed proceedings at FERC has provided LG&E/KU with the opportunity to obtain comprehensive information about the Day 2 markets.

In Commission proceedings not initiated by a complaint or application, prefiled testimony functions like a pleading in circuit court: it gives notice to others of matters brought forward for examination and review and defines what is relevant. Discovery does not precede the pleadings (except for the special circumstances contemplated by CR 27.01); otherwise, the parties could just demand information from one another, without any way to determine whether what is sought is relevant. Given LG&E/KU's request for consideration of "Day 2 issues," it should provide testimony on the record about those issues.

For these reasons, the Midwest ISO's proposed procedural schedule places the data requests in their traditional order — after testimony is filed — and specifically directs that discovery address the filed testimony. The round of discovery allowed after the rebuttal testimony may not be required or efficient; the Commission may wish to instead have parties submit data requests, if any, and obtain an Order that those requests must be answered.

3. Simultaneous Direct Testimony. The Midwest ISO suggests that parties with information to provide for the Commission's consideration relating to the EMT and Day 2 markets or the relative benefits and costs of membership in alternative RTOs file direct testimony simultaneously, on the same date (September 22, 2004) that LG&E/KU's circulated procedural schedule proposes that it alone file direct testimony. What LG&E/KU proposes is, in effect, that all other parties be limited to reacting to what it files. Counsel for LG&E/KU has stated that according the utilities this principal role is warranted because LG&E/KU bears the burden of proof. However, the sequence LG&E/KU proposes is not dictated by the burden of proof and is neither

efficient nor geared to providing the Commission with complete and accurate information in these supplemental proceedings.

In its 6/29/04 motion to modify the procedural schedule, LG&E/KU acknowledges that the Midwest ISO is in the better position to supply information about the EMT and Day 2 markets. In requesting the opportunity to file rebuttal testimony, LG&E/KU noted that the Midwest ISO, "having drafted the EMT ..., may provide additional information in its testimony to which the Companies should be provided an opportunity to respond." The filing of simultaneous direct testimony with subsequent data requests is the quickest and most efficient way to provide information on the EMT to the Commission. All parties, including LG&E/KU and the Midwest ISO, would subsequently have the opportunity to respond to any data provided or positions taken in another party's direct testimony. Thus, if LG&E/KU wished to critique any information brought forth in the Midwest ISO's direct testimony regarding the Day 2 markets, it could submit information requests and address that information in responsive testimony.

While the Midwest ISO agrees that LG&E/KU bears the burden of proof on any request for a change in the status quo or for any other Commission Order, requiring the simultaneous submission of direct and rebuttal testimony would not hinder LG&E/KU in meeting that burden. The Commission originally initiated this case as an investigation into LG&E/ KU's membership in the Midwest ISO. In such investigations, the Commission typically orders the simultaneous submission of direct testimony or briefs because it is interested in receiving the most accurate information from different sources and in the most efficient manner available. To the extent that this case remains an investigation, requiring the simultaneous submission of direct and rebuttal testimony is the most effective means to provide information to the Commission. As the author and proponent of the EMT before FERC, the Midwest ISO is the best source of information on

the operation of the Day 2 markets, and it is willing to provide the Commission with direct testimony on that subject by September 22, 2004. The Midwest ISO would further suggest that LG&E/KU could simultaneously file direct testimony regarding its analysis of the Day 2 markets and thereafter address the Midwest ISO's direct testimony via information requests and responsive testimony. Intervenors, including the Midwest ISO, would have similar opportunities to question the information put forth by LG&E/KU. Therefore, this proposal would allow the Commission to complete its investigation in the most efficient and comprehensive manner.

4. Responses and Rebuttal. The revised procedural schedule proposed by the Midwest ISO would require that data, studies, derivations, and workpapers be served and filed alongside the prefiled testimony they support. These materials are gathered or generated in the course of preparing the testimony, and are the object of a routine data request. Providing them at the same time as the prefiled testimony will speed the analysis of the positions and conclusions stated in the testimony, and would allow for quicker deadlines for data requests as well as response or rebuttal testimony. In addition, because other parties and the Commission will not have to guess at what materials will be provided in response to the routine request for supporting data and other information, there should be no need for a round of supplemental data requests.

With the simultaneous filing of direct testimony and other information each party presents to the Commission for consideration in the supplemental proceedings, the response testimony will not have to serve as "the intervenor's round" for presenting information. Instead, all parties would concentrate on responding to the positions taken and conclusions reached by others in the direct testimony. In turn, the rebuttal testimony would be needed only to defend direct testimony from criticisms in the response testimony — rather than also have to contend with new information and topics. The Midwest ISO agrees with the sentiment expressed on behalf of

LG&E/KU that a party should be given an opportunity to defend information it presents and positions it advocates, and proposes the simultaneous filing of direct, response, and rebuttal testimony as an effective way to provide that opportunity.

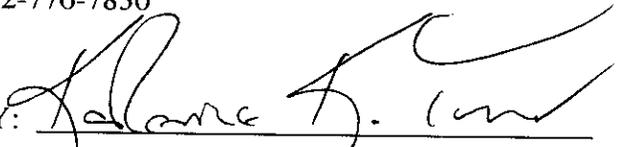
5. Hearing Option. The procedural schedule set in the Commission's 6/22/04 Order listed a public hearing as "to be scheduled." The proposed schedule attached as Exhibit A also contemplates that a hearing may not be needed or wanted. However, the Midwest ISO suggests that (a) a deadline be set for requesting a hearing (or the Commission ordering that one be held) and (b) a day (or block of days) be reserved now for a hearing if one is to be held. Both measures will allow participants to plan ahead. The Midwest ISO anticipates that the hearing could be held in late January or early February, and requests that the hearing not be set during the week of January 17-21, 2005.

WHEREFORE, the Midwest ISO respectfully requests that the Commission adopt its proposed revised procedural schedule. In the alternative, the Midwest ISO suggests that an informal conference be held in early August to allow the parties and Commission Staff to discuss the intended scope for further proceedings in this matter, necessary procedural steps, and dates for their accomplishment. The Midwest ISO would be able to participate in such a conference held at the Commission's offices on any of the following dates: August 2-3, 6, 9-13.

Respectfully submitted,
Katherine K. Yunker
Benjamin D. Allen
YUNKER & ASSOCIATES
P.O. Box 21784
Lexington, KY 40522-1784
859-255-0629
fax: 859-255-0746

Stephen G. Kozey
James C. Holsclaw
MIDWEST INDEPENDENT TRANSMISSION
SYSTEM OPERATOR, INC.
701 City Center Drive
Carmel, IN 46032
317-249-5769

Stephen L. Teichler
DUANE MORRIS, LLP
1667 K Street N.W., Suite 700
Washington, DC 20006-1608
202-776-7830

BY: 
ATTORNEYS FOR MIDWEST INDEPENDENT
TRANSMISSION SYSTEM OPERATOR, INC.

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this the 23rd day of July 2004, the original and ten (10) copies of the foregoing were hand-delivered to the Commission for filing, and a copy was sent by first-class U.S. mail to:

Michael S. Beer
LG&E ENERGY CORP.
220 West Main St.
P.O. Box 32030
Louisville, KY 40232-2030

Elizabeth E. Blackford
Assistant Attorney General
Utility & Rate Intervention Division
1024 Capital Center Drive; Suite 200
Frankfort, KY 40601-8204

Linda S. Portasik
Senior Corporate Attorney
LG&E ENERGY CORP.
220 West Main Street
Louisville, KY 40202

David C. Boehm
BOEHM, KURTZ & LOWRY
Suite 2110 CBLD Building
36 East Seventh Street
Cincinnati, OH 45202

Kendrick R. Riggs
W. Duncan Crosby III
OGDEN NEWELL & WELCH PLLC
1700 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202


Attorney for Midwest Independent
Transmission System Operator, Inc.

EXHIBIT A
**REVISED PROCEDURAL SCHEDULE
FOR SUPPLEMENTAL PROCEEDINGS IN
CASE NO. 2003-00266**

<i>(optional)</i> Informal Conference re scope of supplemental proceedings	early August 2004
Direct testimony <u>and</u> all supporting data, studies, derivations, and workpapers served and filed	09/22/04
Data requests re direct testimony served	10/06/04
Responses to data requests served and filed	10/20/04
Response testimony <u>and</u> all supporting data, studies, derivations, and workpapers served and filed	11/11/04
Data requests re responsive testimony served	11/29/04
Responses to data requests served and filed	12/13/04
Rebuttal testimony <u>and</u> all supporting data, studies, derivations, and workpapers served and filed	12/20/04
Deadline for submitting data requests directed to rebuttal testimony and for requesting a hearing	01/07/05
Responses to data requests (if any) served and filed	01/21/05
Reserved hearing date(s)	late January – early February 2005